

AMENDED IN ASSEMBLY MARCH 22, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 178

Introduced by Assembly Members Gorell and Williams

January 24, 2011

An act to amend Sections 1320 and 12022.1 of, and to add Section 1318.2 to, the Penal Code, relating to county jails.

LEGISLATIVE COUNSEL'S DIGEST

AB 178, as amended, Gorell. County jail: release pursuant to federal court order.

Under existing law, a defendant in a criminal case shall not be released from custody under his or her own recognizance until he or she files a signed release agreement that includes the defendant's promise to appear at all times and places as ordered by the court where the charge is pending, to obey conditions imposed by the court, to not depart the state without leave of the court, to waive extradition if the defendant fails to appear, and an acknowledgment that the defendant has been informed of the consequences and penalties applicable to a violation of the conditions of release.

This bill would require a defendant who is being released prior to sentencing by county jail personnel, pursuant to a ~~federal~~ court order *or policy* mandating the release of inmates, to sign a release agreement with the same requirements as those pertaining to a defendant who is released under his or her own recognizance, including the defendant's promise to appear at the time and place ~~the defendant~~ *he or she* is given in writing by the jail personnel at the time of release.

Existing law provides that a person who has been released pursuant to the above agreement and who fails to appear, as specified, is guilty

of a misdemeanor if the underlying charge or conviction is a misdemeanor, or *if the underlying charge or conviction is a felony, is guilty* of a felony, punishable by imprisonment in state prison or county jail, or a fine not exceeding \$5,000, or both, ~~if the underlying charge or conviction is a felony that imprisonment and fine.~~

This bill would apply these same penalties to someone who fails to appear after being released prior to sentencing from a county jail pursuant to a ~~federal~~ court order *or policy* mandating the release of inmates. Because this bill would create new crimes, it would impose a state-mandated local program.

Existing law imposes a penalty enhancement of 2 additional years in state prison, to be served consecutively to any other term, for a person arrested for a felony offense alleged to have been committed while the person was released from custody on bail or on his or her own recognizance prior to the judgment becoming final.

This bill would apply this 2-year penalty enhancement to a person arrested for a felony offense alleged to have been committed while the person was released prior to sentencing from a county jail pursuant to a ~~federal~~ court order *or policy* mandating the release of inmates.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1318.2 is added to the Penal Code, to
2 read:
3 1318.2. (a) Any defendant released prior to sentencing by
4 county jail personnel pursuant to a ~~federal~~ court order *or policy*
5 mandating the release of inmates when the jail facility reaches a
6 certain capacity shall sign a release agreement that includes all of
7 the following:
8 (1) The defendant's promise to appear at the time and place the
9 defendant is given in writing by the jail personnel at the time of
10 release.

1 (2) The defendant's promise to appear at all times and places
2 the defendant is ordered at subsequent hearings by the court or
3 magistrate and as ordered by any court in which, or any magistrate
4 before whom, the charge is pending.

5 (3) The defendant's promise to obey all reasonable conditions
6 imposed by the court or magistrate.

7 (4) The defendant's promise not to depart this state without
8 leave of the court.

9 (5) Agreement by the defendant to waive extradition if the
10 defendant fails to appear as required and is apprehended outside
11 the State of California.

12 (6) The acknowledgment of the defendant that he or she has
13 been informed of the consequences and penalties applicable to
14 violation of the conditions of release.

15 SEC. 2. Section 1320 of the Penal Code is amended to read:

16 1320. (a) Every person who is charged with or convicted of
17 the commission of a misdemeanor who is released from custody
18 pursuant to Section 1318 or 1318.2 and who in order to evade the
19 process of the court willfully fails to appear as required, is guilty
20 of a misdemeanor. It shall be presumed that a defendant who
21 willfully fails to appear within 14 days of the date assigned for his
22 or her appearance intended to evade the process of the court.

23 (b) Every person charged with or convicted of the commission
24 of a felony who is released from custody pursuant to Section 1318
25 or 1318.2 and who, in order to evade the process of the court,
26 willfully fails to appear as required is guilty of a felony and, upon
27 conviction, shall be punished by a fine not exceeding five thousand
28 dollars (\$5,000) or by imprisonment in the state prison, or in the
29 county jail for not more than one year, or by both that fine and
30 imprisonment. It shall be presumed that a defendant who willfully
31 fails to appear within 14 days of the date assigned for his or her
32 appearance intended to evade the process of the court.

33 SEC. 3. Section 12022.1 of the Penal Code is amended to read:

34 12022.1. (a) For the purposes of this section only:

35 (1) "Primary offense" means a felony offense for which a person
36 has been released from custody on bail or pursuant to Section 1318
37 or 1318.2 prior to the judgment becoming final, including the
38 disposition of any appeal, or for which release on bail or his or her
39 own recognizance has been revoked. In cases where the court has
40 granted a stay of execution of a county jail commitment or state

1 prison commitment, “primary offense” also means a felony offense
2 for which a person is out of custody during the period of time
3 between the pronouncement of judgment and the time the person
4 actually surrenders into custody or is otherwise returned to custody.

5 (2) “Secondary offense” means a felony offense alleged to have
6 been committed while the person is released from custody for a
7 primary offense.

8 (b) Any person arrested for a secondary offense which was
9 alleged to have been committed while that person was released
10 from custody on a primary offense shall be subject to a penalty
11 enhancement of an additional two years in state prison which shall
12 be served consecutive to any other term imposed by the court.

13 (c) The enhancement allegation provided in subdivision (b)
14 shall be pleaded in the information or indictment which alleges
15 the secondary offense, or in the information or indictment of the
16 primary offense if a conviction has already occurred in the
17 secondary offense, and shall be proved as provided by law. The
18 enhancement allegation may be pleaded in a complaint but need
19 not be proved at the preliminary hearing or grand jury hearing.

20 (d) Whenever there is a conviction for the secondary offense
21 and the enhancement is proved, and the person is sentenced on the
22 secondary offense prior to the conviction of the primary offense,
23 the imposition of the enhancement shall be stayed pending
24 imposition of the sentence for the primary offense. The stay shall
25 be lifted by the court hearing the primary offense at the time of
26 sentencing for that offense and shall be recorded in the abstract of
27 judgment. If the person is acquitted of the primary offense the stay
28 shall be permanent.

29 (e) If the person is convicted of a felony for the primary offense,
30 is sentenced to state prison for the primary offense, and is convicted
31 of a felony for the secondary offense, any state prison sentence
32 for the secondary offense shall be consecutive to the primary
33 sentence.

34 (f) If the person is convicted of a felony for the primary offense,
35 is granted probation for the primary offense, and is convicted of
36 a felony for the secondary offense, any state prison sentence for
37 the secondary offense shall be enhanced as provided in subdivision
38 (b).

39 (g) If the primary offense conviction is reversed on appeal, the
40 enhancement shall be suspended pending retrial of that felony.

1 Upon retrial and reconviction, the enhancement shall be reimposed.
2 If the person is no longer in custody for the secondary offense
3 upon reconviction of the primary offense, the court may, at its
4 discretion, reimpose the enhancement and order him or her
5 recommitted to custody.

6 SEC. 4. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.